



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,209	10/20/2003	Triveni P. Shukla	00030-001	4531

7590

04/26/2005

Timothy J. Fullin
Fullin Legal Services LLC
711 North Milwaukee Avenue
Libertyville, IL 60048

EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
----------	--------------

1761

DATE MAILED: 04/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/689,209

Applicant(s)

SHUKLA ET AL.

Examiner

Lien T. Tran

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 September 2004 and 19 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claims 1-2 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention,

Applicant claims a processed cheese comprising an emulsified liquid shortening composition; the composition comprises dietary fiber gel. The gel is an essential element to the composition; however, the specification does not teach how to form the gel. The citation of a US patent is not an incorporation by reference. Also, the specification does not teach how the gel is mixed with water and lipid to form the emulsified liquid shortening composition. How much water and lipid are needed? What kind of lipid can be used? There is no disclosure of how the gel is made and how the shortening composition is made. There is no disclosure of what cheese formulation to use or how much emulsified composition is added to the cheese formulation. One skilled in the art would not know how to make the composition and cheese from reading the specification.

Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wesdorp et al in view of Loh et al.

Wesdorp et al disclose an edible plastic dispersion. The dispersion comprises a gel, water and a fat. The gelling agents used to form the gel can be pectins, carrageenan, xanthan gum and microcrystalline cellulose. The dispersion can suitably be used in products such as cheese, nut or vegetable spread or other food products to reduce the fat content thereof. (see columns 5-6 and col. 8)

Wesdorp et al disclose the gelling materials used can be pectins, carrageenan, xanthan gum and microcrystalline cellulose. All these materials provide dietary fiber; thus, the gel formed is a dietary fiber gel. Fat is a lipid. The dispersion comprises the gel, water and the fat; thus, it is the same as the emulsified liquid shortening composition even though such term is not used in the reference. Wesdorp do not disclose the amount of solid as claimed.

Loh et al disclose insoluble fiber includes microcrystalline cellulose, any form of cellulose, soy fiber etcc. (see col. 4 lines 12-15)

Wesdorp et al disclose the dispersion is used in food products to reduce the fat content; the amounts of solid varies depending on the amount of dispersion used in the food products and it would have been obvious to vary the amount of dispersion used depending on the fat content desiring to reduce. Wesdorp et al disclose the dispersion is used in cheese and spread; thus, it would have been obvious to use the dispersion in processed cheese and processed cheese spread when one wants to reduce the fat content of these product. The limitation of the gel comprising insoluble dietary fiber does not define over Wesdorp et al because microcrystalline cellulose is an insoluble dietary fiber as shown by Loh et al.

In the response filed Sept. 13, 2004, applicant argues Wesdorp et al teaches fat substitute that comprise soluble materials such as gelling protein and starch, and not insoluble dietary fiber. This argument is not persuasive. Wesdorp et al teach a variety of gelling agents, including microcrystalline cellulose. Loh et al show that microcrystalline cellulose is an insoluble fiber. Applicant also argues against the Zolper

Art Unit: 1761

, Luzio and Hoefler et al references; such argument is not understood because these references were not used in the rejection. There is no rejection based on the combination of these references. The Zolper, Luzio and Hoefler et al references were only cited as references of interest.

Applicant's arguments filed 9/13/04 have been fully considered but they are not persuasive.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


LIEN TRAN
PRIMARY EXAMINER
Group 1700